Supreme Court, U. S.
FILED
MAY 6 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-567

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

EUGENE DIFRANCESCO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 5, 1979
CERTIORARI GRANTED FEBRUARY 19, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-567

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

EUGENE DIFRANCESCO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Page
RELEVANT DOCKET ENTRIES	1
INDICTMENT	4
TRANSCRIPT OF DANGEROUS SPECIAL OFFENDER SENTENCING HEARING HELD ON MARCH 17, 1978	17
FINDINGS OF FACT ENTERED ON APRIL 21, 1978	33
RELEVANT PORTIONS OF TRANSCRIPT OF SENTENCING HELD ON APRIL 28, 1978	45
ORDER GRANTING CERTIORARI	47

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

No. CR 76-45

UNITED STATES OF AMERICA

v.

EUGENE DIFRANCESCO, ET AL.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
4-7-76	Filed Indictmet
4-14-76	Filed Govt's notice of readiness
9-12-77	Filed Application and Order sealing Notice purs. to Sect. 3575, T. 18, U.S.C. Said Notice shall remain sealed until ordered unsealed by this Court. ELFVIN, J.
9-13-77	Meeting in chambers w/counsel. Case is moved ready for trial. Jury is duly empaneled. Trial is adj. until 9-19-77.
9-28-77	Court opens purs. to adjournment.
10-31-77	The jury returns at 9:19 pm w/the following verdict: On Count One—Deft DiFrancesco—Guilty On Count Two—Deft DiFrancesco—Guilty
11-14-77	Filed an Application & Order that deft is a dangerous special offender notice be unsealed. ELFVIN, J. (filed & retained in Rochester)
11-14-77	Filed motion by govt. to set date for a special dangerous offender hearing. (filed & retained in Roch.)
3-17-78	Special Dangerous Offender Hearing. Submitted for decision after oral argument & exhibits introduced in evidence. Date for sentence to be set.

DATE	PROCEEDINGS

4-21-78 Fld govt's Findings of Fact.

4-28-78 Deft is sentenced as follows: The Crt: On each of Cts 1 & 2 I impose a sentence of ten yrs to run concurrently w/ea other & concurrently w/three sentences imposed by Judge Pratt on March 17, 1978 in this crt so long as the deft is held in custody on those sentences. This sentence is imposed under the sentencing provisions of Sect. 3575(b) of T. 18, U.S.C., the statute relating to dangerous special offenders, having been so found by me under findings filed 4-21-78.

4-28-78 Fld def'ts Notice of Appeal appealing fr judgment entered 4-28-78.

5-2-78 Fld Judgment & Comm. Ord. BURKE, J. Issued.

5-3-78 Fld Govt's Notice of Appeal appealing for review of the sentence imposed upon deft. 4-28-78.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 78-1250, 78-1369, 78-1371

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

EUGENE DIFRANCESCO, DEFENDANT-APPELLANT

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5-8-78	Filed copies of docket entries, notice of appeal & form B (DiFrancesco)
5-10-78	Filed copies of docket entries, notice of appeal (USA)
7-27-78	Filed record (original papers of district court)
8-16-78	Filed brief, appellant, with proof of service (by mail)
3-16-79	Appellee, DiFrancesco, brief filed—with proof of service (by mail)
4-17-79	Appellee-appellant U.S.A., reply brief filed-to brief filed by appellant DiFrancesco as appellee
4-20-79	Case argued before: Meskill, Smith, CJJ Haight, DJ
8-6-79	Judgment dismissed as to the United States Appeal and affirmed on defendant's appeal by published, signed opinion, filed—JJS, CJ Concurring opinion in the result on the government's appeal filed by Judge Haight, DJ
9-20-79	Mandate Issued (opinion and Judgment)

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

May 1975 Session

No. CR 76-45

THE UNITED STATES OF AMERICA

—*vs.*—

FRANK VALENTI, RENE PICCARRETO, EUGENE DiFRANCESCO a/k/a "Gene D", RICHARD MARINO a/k/a "Molly", JOSEPH LaNOVARA a/k/a "Spike", ANTHONY ARENA a/k/a "Nippy", JOSEPH NALORE, VINCENT RALLO

Vio. 18 U.S.C. 1962(c), 1962(d) & 2

Filed: April 7, 1976

COUNT I

The Grand Jury charges:

That continuously between approximately June 1, 1969 and August 31, 1973, in the Western District of New York and elsewhere, FRANK VALENTI, RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, JOSEPH LA NOVARA, ANTHONY ARENA, JOSEPH NALORE and VINCENT RALLO, the Defendants herein, and Vincent "Jimmy" Massaro (now deceased) and Angelo Monachino, named herein as coconspirators but not as defendants, and others who are both known and unknown to the Grand Jury, unlawfully did conspire, combine, confederate and agree together and with each other to commit an offense against the United States, that is: To conduct and to participate

directly and indirectly in the conduct of the affairs of an Enterprise through a pattern of racketeering activity in violation of Sections 1962(c) and 2 of Title 18 of the United States Code as hereinafter described:

1. At all times pertinent to this Indictment, the aforesaid Defendants, FRANK VALENTI, RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, JOSEPH LA NOVARA, ANTHONY ARENA, JOSEPH NALORE and VINCENT RALLO and the co-conspirators Angelo Monachino and Vincent Massaro were associated together in fact as an Enterprise, as defined by Title 18, United States Code, Section 1961 (4), to wit: A group of individuals associated in fact to commit arson and to defraud certain insurance companies.

2. Throughout much of the period pertinent to this Indictment, (a) FRANK VALENTI supervised and controlled the activities of the said Enterprise, (b) RENE PICCARRETO assisted FRANK VALENTI with supervision and control of the activities of the said Enterprise, (c) EUGENE DI FRANCESCO and RICHARD MARINO supervised the activities of certain members and associates of the said Enterprise, (d) ANTHONY ARENA, JOSEPH LA NOVARA, Angelo Monachino and Vincent Massaro were members and associates of the said Enterprise, and (e) JOSEPH NALORE and VINCENT RALLO were employees and associates of the said Enterprise.

3. At all times pertinent to this Indictment, the said Enterprise did engage in and its activities did affect interstate commerce.

4. At all times pertinent to this Indictment, the said Defendants and co-conspirators did conduct the affairs of the said Enterprise through a pattern of racketeering activity, that is:

(a) The said Defendants and co-conspirators would and did commit and wilfully cause to be committed multiple acts involving arson in violation of Articles 150 and 20 of the Penal Law of the State of New York; and

(b) The said Defendants and co-conspirators would and did commit and wilfully cause to be committed multiple

acts in violation of Sections 1341 and 2 of Title 18 of the United States Code—that is, having devised and intending to devise a scheme and artifice to defraud certain insurance companies and to obtain money and property therefrom by means of false and fraudulent representations, pretenses and promises regarding the facts and circumstances of certain fires which would and did damage certain buildings in and around the City of Rochester, New York; for purposes of executing and attempting to execute the said scheme and artifice to defraud, the said Defendants and co-conspirators unlawfully and wilfully did cause to be placed in certain post offices and authorized depositories for mail matter and to be taken and received therefrom certain matters and things to be sent and delivered by the Postal Service and knowingly did cause to be delivered by mail according to the directions thereon and at the place at which they were directed to be delivered by the person to whom they were addressed such matters and things, the said matters and things being more particularly described as insurance claims, statements of loss, sworn statements in proof of loss, and other reports, documents, memoranda, items, checks and drafts all relating to insurance claims as to various properties more particularly described herein.

5. It was part of the said conspiracy that the said Defendants and co-conspirators would and did commit, among others, the following acts:

(a) On or about January 26, 1970, EUGENE DI FRANCESCO and Vincent Massaro, at the direction of FRANK VALENTI, unlawfully did intentionally damage the building known as the Nickelodeon Tavern located at 884 Emerson Street, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Samuel Moschiano) and the owner of the business located therein (Patrick Marrocco) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE and VINCENT RALLO, the owner of the said premises (Samuel Moschiano) did fraudulently obtain insurance payments totaling approximately $87,760 from the Long Island In-

surance Company of Brooklyn, New York, and the New York Property Insurance Underwriting Association of Brooklyn, New York, and insurance payments totaling approximately $3,733.33 from the Great Southwest Fire Insurance Company of Mesa, Arizona, and insurance payments totaling approximately $1,866.67 from the Ambassador Insurance Company of Newark, New Jersey, and the owner of the said business located on the said premises (Patrick Marrocco) did fraudulently obtain insurance payments totaling approximately $37,240 from the Travelers Indemnity Company of Hartford, Connecticut, and the New York Property Insurance Underwriting Association of Brooklyn, New York, as well as insurance payments totaling approximately $2,615.00 from the Great Southwest Fire Insurance Company of Mesa, Arizona, all the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH NALORE and VINCENT RALLO.

(b) On or about February 18, 1971, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and Vincent Massaro, acting pursuant to the instructions of FRANK VALENTI and with the supervisory assistance of RENE PICCARRETO, unlawfully did intentionally damage the building located at 510-514 South Avenue, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Sebastian "Ben" Coglitore) to collect the insurance coverage thereon; and, thereafter, the owner of the said premises did fraudulently obtain insurance payments totaling approximately $36,511.60 from the United States Fire Insurance Company of New York, New York, and the New York Property Insurance Underwriting Association of Brooklyn, New York, the said insurance payment having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and RENE PICCARRETO.

(c) On or about October 17, 1971, EUGENE DI FRANCESCO and Angelo Monachino unlawfully did in-

tentionally damage the building located at 660 Mount Read Boulevard, Rochester, New York, by starting a fire therein for purposes of enabling Anthony Giardina, who then held a second mortgage on the said premises, to wilfully and fraudulently cause to be collected by Fred Boynton, the owner of the said premises who had no knowledge that arson had been committed upon the said premises, insurance payments totaling approximately $9,831.19 from the Aetna Casualty and Surety Company of Hartford, Connecticut, said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendant EUGENE DI FRANCESCO.

(d) On or about November 14, 1971, EUGENE DI FRANCESCO and Vincent Massaro unlawfully did intentionally damage the building located at 3253 Chili, New York, by starting a fire therein for purposes of enabling an owner of the said premises (Patrick Roncone) to collect the insurance coverage thereon; and, thereafter, the said owner of the said premises did fraudulently obtain insurance payments from the Nationwide Insurance Company, totaling approximately $17,500, the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendant EUGENE DI FRANCESCO.

(e) On or about December 25, 1971, EUGENE DI FRANCESCO, Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and under the supervision of RENE PICCARRETO and RICHARD MARINO, and with the assistance of RENE PICCARRETO and JOSEPH NALORE, unlawfully did intentionally damage the building known as the Select Tire Company located at 2100 Culver Road, Irondequoit, New York, by starting a fire therein for purposes of enabling the owners of the said premises (Anthony Giardina and Lawrence Uchie) to collect and cause to be collected the insurance coverage thereon; and, thereafter, the owners of the said premises did fraudulently obtain and cause to be obtained insurance payments totaling approximately $19,873.58 and $13,883.71 from the Travelers Indemnity Company of Hartford, Connecticut, insurance payments totaling approximately $32,589 from the Hart-

ford Insurance Company of Hartford, Connecticut, and insurance payments totaling approximately $120,000 from the General Accident Group Insurance Company of Atlanta, Georgia, and the General Cover Department of New York, New York, all the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, RENE PICCARRETO, JOSEPH NALORE and RICHARD MARINO.

(f) On or about April 10, 1972, EUGENE DI FRANCESCO, Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and pursuant to arrangements made by JOSEPH LA NOVARA and with the assistance of JOSEPH LA NOVARA, unlawfully did intentionally damage the building located at 1344 Pinnacle Road, Henrietta, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Mildred LaNovara) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE, the said owner of the said premises (Mildred LaNovara) did fraudulently obtain insurance payments totaling approximately $51,000 from the Travelers Indemnity Company of Hartford, Connecticut, the said insurance payment having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and JOSEPH NALORE.

(g) On or about May 21, 1972, EUGENE DI FRANCESCO, Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and pursuant to arrangements made by VINCENT RALLO and with the assistance of VINCENT RALLO, unlawfully did intentionally damage a barn located at or near 4251 Brick Schoolhouse Road, Hamlin, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Vicmar Development Corporation) to collect the insurance coverage thereon, and, thereafter, the owner of the said premises did fraudulently obtain insurance payments totaling approximately $14,000 from

the Hartford Insurance Company of Hartford, Connecticut, and the New York Property Insurance Underwriting Association of Brooklyn, New York, the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO and VINCENT RALLO.

(h) On or about March 17, 1973, ANTHONY ARENA and Vincent Massaro, acting at the direction of RICHARD MARINO and RENE PICCARRETO and pursuant to arrangements made by EUGENE DI FRANCESCO and with the supervisory assistance of Angelo Monachino, unlawfully did intentionally damage the building located at 504-508 South Avenue, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Sebastian "Ben" Coglitore) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE, the owner of the said premises (Sebastian Coglitore) did fraudulently obtain insurance payments totaling approximately $31,936.62 from the New York Property Insurance Underwriting Association of New York, New York, the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, ANTHONY ARENA and JOSEPH NALORE.

All of which was in violation of Section 1962(d) of Title 18 of the United States Code.

COUNT II

The Grand Jury further charges:

That continuously between approximately June 1, 1969 and August 31, 1973, in the Western District of New York and elsewhere, FRANK VALENTI, RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, JOSEPH LA NOVARA, ANTHONY ARENA, JOSEPH NALORE and VINCENT RALLO, the Defendants herein, unlawfully did conduct and participate, directly and indirectly, in the conduct of the affairs of an

Enterprise through a pattern of racketeering activity as hereinafter described:

1. At all times pertinent to this Indictment, the aforesaid Defendants, FRANK VALENTI, RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, JOSEPH LA NOVARA, ANTHONY ARENA, JOSEPH NALORE and VINCENT RALLO were associated together in fact as an Enterprise, as defined by Title 18, United States Code, Section 1961(4), to wit: A group of individuals associated in fact to commit arson and to defraud certain insurance companies.

2. Throughout much of the period pertinent to this Indictment, (a) FRANK VALENTI supervised and controlled the activities of the said Enterprise, (b) RENE PICCARRETO assisted FRANK VALENTI with supervision and control of the activities of the said Enterprise, (c) EUGENE DI FRANCESCO and RICHARD MARINO supervised the activities of certain members and associates of the said Enterprise, (d) ANTHONY ARENA, JOSEPH LA NOVARA, and Angelo Monachino and Vincent Massaro were members and associates of the said Enterprise, and (e) JOSEPH NALORE and VINCENT RALLO were employees and associates of the said Enterprise.

3. At all times pertinent to this Indictment, the said Enterprise did engage in and its activities did affect interstate commerce.

4. At all times pertinent to this Indictment, the said Defendants did conduct the affairs of the said Enterprise through a pattern of racketeering activity, that it:

(a) The said Defendants and others did commit and wilfully cause to be committed multiple acts involving arson in violation of Articles 150 and 20 of the Penal Law of the State of New York; and

(b) The said Defendants and others did commit and wilfully cause to be committed multiple acts in violation of Sections 1341 and 2 of Title 18 of the United States Code—that is, having devised and intending to devise a scheme and artifice to defraud certain insurance companies and to obtain money and property therefrom by

means of false and fraudulent representations, pretenses and promises regarding the facts and circumstances of certain fires which had damaged certain buildings in and around the City of Rochester, New York; for purposes of executing and attempting to execute the said scheme and artifice to defraud, the said Defendants and others unlawfully and wilfully did cause to be placed in certain post offices and authorized depositories for mail matter and to be taken and received therefrom certain matters and things to be sent and delivered by the Postal Service and knowingly did cause to be delivered by mail according to the directions thereon and at the place at which they were directed to be delivered by the person to whom they were addressed such matters and things, the said matters and things being more particularly described as insurance claims, statements of loss, sworn statements in proof of loss, and other reports, documents, memoranda, items, checks and drafts all relating to insurance claims as to various properties more particularly described herein.

5. And, the following specific acts of racketeering activity, among others, were committed in the course of conducting the Enterprise's affairs:

(a) On or about January 26, 1970, EUGENE DI FRANCESCO and Vincent Massaro, at the direction of FRANK VALENTI, unlawfully did intentionally damage the building known as the Nickelodeon Tavern located at 884 Emerson Street, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Samuel Moschiano) and the owner of the business located therein (Patrick Marrocco) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE and VINCENT RALLO, the owner of the said premises (Samuel Moschiano) did fraudulently obtain insurance payments totaling approximately $87,760 from the Long Island Insurance Company of Brooklyn, New York, and the New York Property Insurance Underwriting Association of Brooklyn, New York, and insurance payments totaling $3,733.33 from the Great Southwest Fire Insurance Company of Mesa, Arizona, and insurance payments

totaling approximately $1,866.67 from the Ambassador Insurance Company of Newark, New Jersey, and the owner of the said business located on the said premises (Patrick Marrocco) did fraudulently obtain insurance payments totaling approximately $37,240 from the Travelers Indemnity Company of Hartford, Connecticut, and the New York Property Insurance Underwriting Association of Brooklyn, New York, as well as insurance payments totaling approximately $2,615.00 from the Great Southwest Fire Insurance Company of Mesa, Arizona, all the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH NALORE and VINCENT RALLO.

(b) On or about February 18, 1971, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and Vincent Massaro, acting pursuant to the instructions of FRANK VALENTI and with the supervisory assistance of RENE PICCARRETO, unlawfully did intentionally damage the building located at 510-514 South Avenue, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Sebastian "Ben" Coglitore) to collect the insurance coverage thereon; and, thereafter, the owner of the said premises did fraudulently obtain insurance payments totaling approximately $36,511.60 from the United States Fire Insurance Company of New York, New York, and the New York Property Insurance Underwriting Association of Brooklyn, New York, the said insurance payment having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and RENE PICCARRETO.

(c) On or about October 17, 1971, EUGENE DI FRANCESCO and Angelo Monachino unlawfully did intentionally damage the building located at 660 Mount Read Boulevard, Rochester, New York, by starting a fire therein for purposes of enabling Anthony Giardina, who then held a second mortgage on the said premises, to wilfully and fraudulently cause to be collected by Fred

Boynton, the owner of the said premises who had no knowledge that arson had been committed upon the said premises, insurance payments totaling approximately $9,831.19 from the Aetna Casualty and Surety Company of Hartford, Connecticut, said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendant EUGENE DI FRANCESCO.

(d) On or about November 14, 1971, EUGENE DI FRANCESCO and Vincent Massaro unlawfully did intentionally damage the building located at 3253 Chili Avenue, Chili New York, by starting a fire therein for purposes of enabling an owner of the said premises (Patrick Roncone) to collect the insurance coverage thereon; and, thereafter, the said owner of the said premises did fraudulently obtain insurance payments from the Nationwide Insurance Company of Cleveland, Ohio, through the Syracuse Regional Office of the Nationwide Insurance Company, totaling aproximately $17,500, the said insurance payments having been obtained by utilization of the United States Mails which was wilfully caused by the Defendant EUGENE DI FRANCESCO.

(e) On or about December 25, 1971, EUGENE DI FRANCESCO, Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and under the supervision of RENE PICCARRETO and RICHARD MARINO, and with the assistance of RENE PICCARRETO and JOSEPH NALORE, unlawfully did intentionally damage the building known as the Select Tire Company located at 2100 Culver Road, Irondequoit, New York, by staring a fire therein for purposes of enabling the owners of the said premises (Anthony Giardina and Lawrence Uchie) to collect and cause to be collected the insurance coverage thereon; and, thereafter, the owners of the said premises did fraudulently obtain and cause to be obtained insurance payments totaling approximately $19,873.58 and $13,883.71 from the Travelers Indemnity Company of Hartford, Connecticut, insurance payments totaling approximately $32,589 from the Hartford Insurance Company of Hartford, Connecticut, and insurance payments totaling approximately $120,000 from the Gen-

eral Accident Group Insurance Company of Atlanta, Georgia, and the General Cover Department of New York, New York, all the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, RENE PICCARRETO, JOSEPH NALORE and RICHARD MARINO.

(f) On or about April 10, 1972, EUGENE DI FRANCESCO, Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and pursuant to arrangements made by JOSEPH LA NOVARA and with the assistance of JOSEPH LA NOVARA, unlawfully did intentionally damage the building located at 1344 Pinnacle Road, Henrietta, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Mildred LaNovara) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE, the said owner of the said premises (Mildred LaNovara) did fraudulently obtain insurance payments totaling approximately $51,000 from the Travelers Indemnity Company of Hartford, Connecticut, the said insurance payment having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO, JOSEPH LA NOVARA and JOSEPH NALORE.

(g) On or about May 21, 1971, EUGENE DI FRANCESCO(Vincent Massaro and Angelo Monachino, acting at the direction of FRANK VALENTI and pursuant to arrangements made by VINCENT RALLO and with the assistance of VINCENT RALLO, unlawfully did intentionally damage a barn located at or near 4251 Brick Schoolhouse Road, Hamlin, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Vicmar Development Corporation) to collect the insurance coverage thereon, and, thereafter, the owner of the said premises did fraudulently obtain insurance payments totaling approximately $14,000 from the Hartford Insurance Company of Hartford, Connecticut, and the New York Property Insurance Underwriting Association of Brooklyn, New York, the said insurance payments

having been obtained by utilization of the United States mails which was wilfully caused by the Defendants FRANK VALENTI, EUGENE DI FRANCESCO and VINCENT RALLO.

(h) On or about March 17, 1973, ANTHONY ARENA and Vincent Massaro, acting at the direction of RICHARD MARINO and RENE PICCARRETO and pursuant to arrangements made by EUGENE DI FRANCESCO and with the supervisory assistance of Angelo Monachino, unlawfully did intentionally damage the building located at 504-508 South Avenue, Rochester, New York, by starting a fire therein for purposes of enabling the owner of the said premises (Sebastian "Ben" Coglitore) to collect the insurance coverage thereon; and, thereafter, with the unlawful assistance of JOSEPH NALORE, the owner of the said premises (Sebastian Coglitore) did fraudulently obtain insurance payments totaling approximately $31,936.62 from the New York Property Insurance Underwriting Association of New York, New York, the said insurance payments having been obtained by utilization of the United States mails which was wilfully caused by the Defendants RENE PICCARRETO, EUGENE DI FRANCESCO, RICHARD MARINO, ANTHONY ARENA and JOSEPH NALORE.

All of which was in violation of Sections 1962(c) and 2 of Title 18 of the United States Code.

/s/ Richard J. Arcara
RICHARD J. ARCARA
United States Attorney

/s/ [Illegible]
Foreman

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

CR: 76-45

UNITED STATES OF AMERICA

-vs-

EUGENE DIFRANCESCO, DEFENDANT

Transcript of proceedings had in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, Rochester, New York, on Friday, March 17, 1978.

APEARANCES:

RICHARD J. ARCARA, ESQ.
United States Attorney
(By Gregory Baldwin, Esq.)
Organized Crime & Racketeering Section
318 Federal Building
Rochester, New York 14614
Appearing on behalf of the Government.

PAUL R. SHANAHAN, ESQ.
OCS Building
Syracuse, New York 13202
Appearing on behalf of the Defendant.

[2] MR. BALDWIN: Your Honor, we have before the Court this morning pursuant to the Government's Notice filed prior to the trial of defendant Eugene DiFrancesco in Indictment 76-45, which was tried commencing last September 13, 1977, and which ended on October 31st, 1977, in which Mr. DiFrancesco was convicted on both counts.

In connection with that, the Government filed a Notice prior to trial pursuant to 18 U.S.C., Section 3575, also called a Special Dangerous Offender Notice. The Government submits, and the hearing that we are having today is for the purpose of enabling the Court to determine that the defendant, Eugene DiFrancesco, is pur-

suant to Section 3575 of Title 18, United States Code, a Special Dangerous Offender, and accordingly, should be sentenced in connection with the provisions of that statute.

Now, Your Honor, the statute requires first that an offender be a special offender within the terms of the statute, which requires that at the time of commission of the crime in question, which is the two counts for which Mr. DiFrancesco was convicted, the racketeering organization counts, and the conspiracy, that he be over the age of twenty-one years. It re- [3] quires that the conviction consist of a felony and that that felony involve a conspiracy consisting of three or more persons in addition to the defendant, Mr. DiFrancesco, and further, it requires that in connection with that conspiracy or that crime, that the defendant initiate, organize, direct, manage, supervise all or part of that conspiracy. That is what the Government is required to show by a preponderance of the evidence to establish Mr. DiFrancesco as a special offender under this statute.

As for a dangerous offender, Your Honor, Section 3575 (f) of Title 13 states that an individual is a dangerous offender if a period of confinement longer than that provided for in the triggering offense, or for the offense to which he is convicted, is required for the protection of the public from further criminal conduct by the defendant.

Your Honor, first I would like to address myself to the question of whether or not Mr. DiFrancesco is a special offender within the meaning of the statute. The offense to which brings us to this point involves two counts. The first count was violation of Title 18, United States Code, Section 1962(c), which charged that [4] Mr. DiFrancesco and others operated a business whose pattern of activity was racketeering activity and that the activity was the arranging of arsons in violation of New York law and the commission of mail fraud in violation of the Federal law.

The indictment specified eight separate arsons, or fires, that took place in the Rochester area. And according to the testimony in that trial, which was held before you,

Your Honor, Mr. DiFrancesco was involved in varying degrees in all eight of those arsons.

The conspiracy charge in Indictment 76-45 in violation of Section 1962(d) was alleged and proven to have existed between June of 1969 and August of 1973.

Now the indictment, Your Honor, I would like to have marked as Government's Exhibit 1. I have a certified copy of the indictment, and I submit it into evidence pursuant to Rule 902 of the Federal Rules.

(Government's Exhibit 1 marked for identification.)

MR. SHANAHAN: This is the indictment of CR: 76-45?

MR. BALDWIN: That's correct.

I move it into evidence, Your Honor.

[5] THE COURT: It is received.

(Government's Exhibit 1 marked in evidence.)

MR. BALDWIN: Your Honor, referring to Government's Exhibit 1, which is the indictment for which Mr. DiFrancesco was convicted, the indictment clearly by its title and by the charges in both counts involve Mr. DiFrancesco. It also involves as a co-conspirator Mr. Angelo Monachino, who is an unindicted co-conspirator but who by his own admission and his testimony during this trial stated that he was a co-conspirator in this crime.

It also names Mr. Joseph LaNovara as an unindicted co-conspirator and Mr. LaNovara by his own admission was a co-conspirator in this crime along with Mr. DiFrancesco.

It also names Mr. Vincent Rallo as a defendant and as a member of this conspiracy. And Mr. Rallo himself was convicted for the conspiracy and substantive count.

It also names as an unindicted co-conspirator Mr. Vincent Massaro, who is now deceased. He was named as a co-conspirator in the conspiracy by Mr. [6] Angelo Monachino and by Mr. Joseph LaNovara in their testimony.

Now the charge, Your Honor, involved the pattern of conduct which was unlawful under the law of the State

of New York, and that law was the Law of New York Penal Code, Article 150, which outlaws arson, and Article 150.10, arson in the third degree.

And I request that the Court at this time take judicial notice of the fact that the pattern of conduct in Government's Exhibit 1, which is the original indictment, the pattern of conduct involves violation of New York law and also violation of Federal law, and the Federal law being Title 18 of the United States Code, Section 1341, mail fraud.

I have a request for judicial notice and I present it into evidence at this time.

THE COURT: All right. Mark it for identification.

(Government's Exhibit 2 marked for identification.)

MR. SHANAHAN: Your Honor, as I look at this Exhibit, it sets forth various quotations from the New York State Penal Law, which deal with the crime of [7] arson, and then it contains various other matters which Mr. Baldwin agrees do not apply in connection with this hearing. So as far as it contains reference to the New York Penal Law and definitions from the New York Penal Law, I have no objection to it.

MR. BALDWIN: We submit that portion of it into evidence, Your Honor.

THE COURT: Received.

(Government's Exhibit 2 marked in evidence.)

MR. BALDWIN: Your Honor, the testimony in the trial of Indictment 76-45, Government's Exhibit 1, showed that Mr. Eugene DiFrancesco, the subject of the hearing here, initiated, organized, directed, managed and supervised at least a part of the conspiracy, and this much is proven, Your Honor, proven by the fact that the jury has found Mr. DiFrancesco guilty of the conspiracy which necessarily entails that there did exist a conspiracy and that he was a member and necessarily entails acceptance of the testimony in support of that conspiracy.

To establish the conviction, Your Honor, I have here a certified copy of the minutes of the jury's [8] return of

a verdict of guilty on Mr. DiFrancesco and Mr. Rallo, and I move that into evidence.

MR. SHANAHAN: Is this a stenographic transcript of the verdict?

MR. BALDWIN: Yes.

(Government's Exhibit 3 marked in evidence.)

MR. BALDWIN: Now the testimony which supports the verdict of guilty and which is reflected in Government's Exhibit 3 took place in the trial which occurred before you, Your Honor, between September 13th and October 31st, 1977. In relation to each of the eight arsons that are listed in the indictment, Government's Exhibit 1, as a pattern of racketeering activity, the first is the Nickelodian Tavern on 884 Emerson Street, which occurred in January, 1970.

Mr. Monachino testified in that, that Mr. DiFrancesco admitted that he had prepared the Nickelodian Tavern with James Massaro or Vincent Massaro for a fire and that he had directed and supervised it, and that Vincent Rallo had assisted in setting up that fire, arranging for the arson itself.

The second fire was at 510-514 South Avenue, [9] which took place in February of 1971. In connection with that fire, Joseph LaNovara testified that Mr. DiFrancesco took he and Mr. Massaro to that location, told them where to set up the fires, instructed them on how to set up the fires, and told them what to do, and that this fire was initiated, organized, directed and supervised and managed by Mr. DiFrancesco.

Mr. Monachino testified that Mr. DiFrancesco later after the fire admitted to him that he had assisted in preparing the location on South Avenue for the blaze.

Sebastian Coglitore, the owner of the building, testified that he set up this arson through Mr. DiFrancesco at Mr. DiFrancesco's initiative and his suggestion and that all the financial arrangements were made with Mr. DiFrancesco and through Mr. DiFrancesco.

The Government submits that in this fire also Mr. DiFrancesco initiated, directed, supervised and managed the conduct of the felony involved.

The next fire was 660 Mt. Read Boulevard in October of 1971. Angelo Monachino testified in connection with that that he had been telephoned by Mr. [10] DiFrancesco after the fire and taken there to that location and that while there, Mr. DiFrancesco stated that maybe he should do it over again alone because it hadn't been that successful a fire.

Anthony Giardina, who had a financial interest in the building and who had assisted the owner, Mr. Boynton, in purchasing it, testified that he set up this arson with Mr. DiFrancesco directly and that Mr. DiFrancesco came out to that location and with Mr. Giardina reviewed the property and explained the details of the fire. He stated that he met with Mr. DiFrancesco after the fire, at Mr. DiFrancesco's request, while certain debris was removed because there was danger of some sort of inspection or investigation by an arson squad.

Sebastian Coglitore testified that he, Mr. Coglitore, arranged for the financing of this arson directly with Mr. DiFrancesco in behalf of Anthony Giardina.

Again, the Government submits that this fire also was initiated, organized, directed, managed and supervised by Mr. DiFrancesco.

The fourth fire was 3253 Chili Avenue in [11] November, 1971. Mr. Coglitore's testimony before this Court in that case was that he met with Mr. DiFrancesco and the owner of the building, Dr. Patrick Roncone, in order to spell out the terms of the fire, the timing of the fire, and what the finances would be, and also to put the two of them, Mr. DiFrancesco and Dr. Roncone together for the purpose of arranging the fire itself.

Angelo Monachino testified that he had heard the order to Mr. DiFrancesco that he go out and burn the location and that he, Mr. Monachino, delivered materials out to that location at Mr. DiFrancesco's request in order to assist them in burning the place down. He was told at that time by Mr. DiFrancesco where the fire would be set in the building, and after the fire Mr. DiFrancesco admitted to him that he had set the fire and that it had gone well, although sometime after that he again admitted that he was receiving complaints because the fire

had not totally destroyed the premises at 3253 Chili Avenue.

Again, on the basis of the testimony, Your Honor, it is clear that Mr. DiFrancesco initiated, organized, directed, managed and supervised this

[12] The fifth fire was at the Select Tire Company in December of 1971. The testimony before Your Honor from Angelo Monachino was that prior to the fire he was taken there by Mr. DiFrancesco. Mr. DiFrancesco gave orders to Mr. Monachino concerning flammable liquid. He instructed Mr. Monachino to make sure that the owners had gotten at least a barrel of flammable liquid to be used in helping to set and spreading the fire.

Mr. Monachino also testified that he collected money from the owners on behalf of Mr. DiFrancesco; that Mr. DiFrancesco was present when that money was collected; that he directed the preparations for the fire himself in person, and that later after the fire he admitted to Mr. Monachino that he had, in fact, set the fire himself after the preparations had been made by Mr. Monachino and others under Mr. DiFrancesco's supervision.

Anthony Giardina, who was a co-owner of the Select Tire Company, testified before this Court and jury that he arranged for that fire in particular through Mr. DiFrancesco directly, and that Mr. DiFrancesco made the arrangements for the terms of the fire and the [13] amount to be paid; that Mr. DiFrancesco instructed Mr. Giardina and Mr. Uchie when to be present at the location in order to let them into the building and when to be away from the location, and that he, Mr. Giardina, paid money to Mr. DiFrancesco himself in return for this arson. And again their testimony establishes, Your Honor, that Mr. DiFrancesco initiated, supervised, managed, directed and helped to organize the fire at the Select Tire Company.

The next fire occurred at 1344 Pinnacle Road in April of 1972, Your Honor. The testimony before this Court relating to Mr. DiFrancesco's role in that fire first was from Mr. Joseph LaNovara, who owned the house. He, through Mr. Valenti, directed Mr. DiFrancesco to burn

the house. Mr. DiFrancesco was responsible for and did, in fact, get the men to help him to burn that house and also got the supplies necessary to burn that house, and Mr. DiFrancesco himself, according to Mr. LaNovara, actually made the preparations for this fire.

Angelo Monachino testified before the Court that he was taken by Mr. DiFrancesco to the scene of this fire and that along with Mr. Vincent Massaro and [14] under Mr. DiFrancesco's supervision, the preparations were made for the setting of the fire at 1344 Pinnacle Road. He also testified that later after the preparations were made, later on that night, he went back to the scene with Mr. DiFrancesco and Mr. Massaro, dropped them off, and while he drove up the road and returned, they went into the house and actually set the fire itself. He then drove them off.

Again, the Government submits that this testimony shows that Mr. DiFrancesco initiated, supervised, managed, directed and organized the setting of this fire in the conduct of this felony.

The seventh fire was a barn out in Hamlin, New York. That fire occurred in May of 1972. Angelo Monachino testified as to Mr. DiFrancesco's role in this fire, that Mr. DiFrancesco himself gave the instructions to Angelo Monachino as to when, where and how this fire would take place. Angelo Monachino went out to the barn in Hamlin with Mr. DiFrancesco and with Mr. Massaro and there they proceeded to set up or to make the preparations for the fire. Angelo Monachino actually helped set this fire. Later they returned after the preparations had been made on Mr. [15] DiFrancesco's orders and the fire was actually set.

Robert Del Monache, the owner of the barn, stated that he had set up this fire and made the arrangements through Mr. Vincent Rallo, but according to the testimony, Your Honor, Mr. DiFrancesco in major part helped to organize, supervise, manage and direct the conduct of this felony, of this arson, at the barn in Hamlin.

The last fire that was involved in the indictment, Your Honor, Government's Exhibit 1, was at 504-508 South Avenue, which took place in March, 1973. The testimony by Mr. Sebastian Coglitore, who owned that building, was

that he was told by Mr. DiFrancesco to do it in order to spend, what he characterized, as credit or money that he had coming to him from other fires. His testimony was basically that Mr. DiFrancesco in the arson organization owed him money, and he wanted to collect that money back, and Mr. DiFrancesco stated to him, "The only way you are going to get it back is by having the rest of that building on South Avenue burned down," which he proceeded to do. Mr. DiFrancesco, according to him, made the initial arrangements, although Angelo Monachino made the final arrangements [16] and collected the money. But, again, this was also initiated by Mr. DiFrancesco.

Also, Your Honor, according to Angelo Monachino and Joseph LaNovara in their testimony concerning this pattern of conduct and this series of arsons, there was a business, a highly organized business, which was conducting these arsons. They testified that Mr. DiFrancesco, at least up until mid-1972, was a captain in that organization and that, as such, he gave them orders and supervised them and Mr. Massaro in the various conduct of the affairs of this business, which involved almost all of the fires named in the indictment.

This litany of criminal acts in which Mr. DiFrancesco was involved and which clearly are a pattern of activity were proven beyond a reasonable doubt at trial. And the fact that a conspiracy existed and that Mr. DiFrancesco was involved in it and that Mr. DiFrancesco initiated, organized, supervised, managed and directed at least a part of that conspiracy was also proven beyond a reasonable doubt at the trial before Your Honor. These acts constitute as a whole a pattern of criminal conduct which is in violation [17] of the New York law and in violation of the Federal law; the New York law being Article 150, which Your Honor has judicial notice of relating to arson; the Federal law being mail fraud in violation of Section 1341, which Your Honor has taken judicial notice of.

Finally, Your Honor, Mr. DiFrancesco was over the age of twenty-one at the time the crime was committed. He was born on June 15, 1934. I have a certified copy

of his birth certificate, which I move into evidence at this time.

(Government's Exhibit 4 marked in evidence.)

MR. BALDWIN: Now as I noted initially, Your Honor, Title 18 of the United States Code, Section 3575, states that an individual is a special offender if he is over twenty-one years of age at the time the crimes were committed, if he stands convicted of a felony, and that felony was a conspiracy, or the defendant was acting in furtherance of the conspiracy with three or more other persons; if that felony involved the engagement and a pattern of conduct which was criminal under the applicable laws of any jurisdiction, which in our case would be the laws of New [18] York, the Federal laws, and that the defendant did or agreed to initiate, organize, plan, manage, direct or supervise all or a part of the conspiracy. Mr. DiFrancesco was clearly over the age of twenty-one at the time these crimes occurred. That is shown by Government's Exhibit 4, his birth certificate.

He stands convicted of a felony in which involved three or more other persons. That is shown partially by Government's Exhibit 3, which are the minutes of Mr. DiFrancesco's conviction, which show the existence of a conspiracy, the membership of Mr. Vincent Rallo and by their own admission Mr. Monachino and Mr. LaNovara as well as Mr. Massaro. There are at least four other individuals proven to have been involved in this conspiracy as well as Mr. DiFrancesco. The fact that the pattern of conduct was in violation of the applicable criminal laws as shown through Government's Exhibit 2, which relates to the New York law against arson, as well as Federal law against mail fraud.

And finally, the fact that the defendant did or agreed to initiate, organize, plan, manage, direct or supervise all or a part of this conspiracy is [19] shown by the sworn testimony which was subjected to intense cross examination and which was given before this Court during the trial.

In regard to the question of whether or not Mr. DiFrancesco is a dangerous offender, the statute describes

a dangerous offender as a person who requires a period of confinement longer that that provided for by the statute itself, Section 1962, a period required that long for the protection of the public from further criminal conduct by the defendant.

Mr. DiFrancesco's criminal history is based upon proven crimes, crimes proven in open court beyond a reasonable doubt and not upon speculation or hearsay. The first was the Nickelodian Tavern fire, which consisted of two felonies, at least, that of arson in violation of New York law, and that of mail fraud. That took place in January of 1970. It is supported by Government's Exhibit 1 and 3.

Secondly, in the summer of 1970, Mr. DiFrancesco was involved in the unlawful storage of dynamite in violation of Title 18, United States Code, Section 842(j), which is a misdemeanor, and also was involved in the destruction of Federal property in violation of [20] Title 18, United States Code, Section 1341, and conspiracy, and this all relating to the Columbus Day bombings of October, 1970.

In support of this, Your Honor, the Government submits a certified copy of the Indictment 75-165 and the minutes of Mr. DiFrancesco's conviction on these three counts that I have just related.

(Government's Exhibits 5 and 6 marked in evidence.)

MR. BALDWIN: To go on with Mr. DiFrancesco's history of criminal conduct, the next event was in February of 1971. That was the arson at 510-514 South Avenue. That involved two felonies again, arson and mail fraud. That is supported by Government's Exhibits 1 and 3. Also through June, July and August of 1971, Mr. DiFrancesco was involved in loansharking. That was summarized in an indictment which was handed down, Indictment No. 75-38 and tried before this Court. Mr. DiFrancesco was convicted of Title 18, United States Code, Section 892 and Section 894, which is conspiracy to make extortionate extensions of credit and the making of such extensions of credit and conspiracy to use ex-

tortionate means to collect credit [21] and the actual doing so.

In support of that, Your Honor, the Government submits a certified copy of Indictment 75-38 and also a certified copy of the judgment and commitment reflecting Mr. DiFrancesco's conviction on all counts of that indictment.

(Government's Exhibits 7 and 8 marked in evidence.)

MR. BALDWIN: In that period of activity through June, July and August of 1971 involved a commission of four additional felonies as supported by Government's Exhibits 7 and 8.

The next crime was October, 1971, the next proven crime, I should say, which involved the arson at 660 Mt. Read Boulevard, and that, again, involved two felonies, arson and mail fraud, and it is supported by Government's Exhibits 1 and 3.

The next proven crime took place in November of 1971, the fire at 3253 Chili Avenue, which again involved arson and mail fraud, two felonies.

December of 1971, the Select Tire Company. Again, arson and mail fraud.

April of 1972, the fire at 1344 Pinnacle Road. [22] Again, arson and mail fraud.

May of 1972, the barn on Brick School House Road in Hamlin. Again, involving arson and mail fraud.

March of 1973, the fire at 504-508 South Avenue. Again, involving arson and mail fraud.

Finally, November of 1973, which is the murder of Vincent Massaro and the conspiracy to commit murder. Now it is well-known that that conviction of Mr. DiFrancesco for that murder has been reversed. The basis of that reversal is the fact that the corroborating evidence supplied by the Monroe County Sheriff's Department was, in fact, perjured, according to former Detective William P. Marks, and on the basis of that statement, the conviction was reversed. There is no indication whatsoever, however, Your Honor, that the main witnesses in that case who testified to Mr. DiFrancesco's

involvement and Mr. DiFrancesco's actual commission of that murder told anything but the truth, and those witnesses are Angelo Monachino and Joseph LaNovara.

Now Section 3577 of Title 18 states that there is no limit set on the information that a Court can hear concerning the question of whether an individual [23] is a special offender or a dangerous offender. There is no question, I would submit, as to whether or not Mr. Monachino or Mr. LaNovara told the truth in that case. There is absolutely no attack upon their testimony whatsoever, and it was accepted by the jury. Consequently, I submit into evidence a certified copy of Mr. DiFrancesco's judgment and commitment in that case also.

MR. SHANAHAN: If the Court please, in view of the fact that that particular conviction was not reversed but actually was vacated and set aside, I would object to the certificate of conviction now sought to be offered in evidence in this case.

MR. BALDWIN: By the terms of the statute, there is no limit upon the evidence that the Court may hear and consider in connection with this case. I submit it as showing the testimony of Mr. Monachino and Mr. LaNovara in connection with this act performed by Mr. DiFrancesco in regard to the murder. Whether he stands convicted formally of it or not, the fact remains that he was found guilty on the basis of that testimony.

MR. SHANAHAN: Counsel is offering a certifi- [24] cate of conviction that no longer has any validity.

THE COURT: This is only argument. I will consider it when I decide the case.

(Government's Exhibit 9 marked for identification.)

MR. BALDWIN: In March of 1975 pursuant to Mr. DiFrancesco's loansharking conviction before this Court, he was sentenced to eighteen months in jail. He was released on or about April 1st, 1976.

In November, 1976, he was convicted of murder and conspiracy to commit murder and ultimately sentenced to twenty-five years to life. That, again, was reversed in January of 1978, but Mr. DiFrancesco was incarcerated between November and January of 1978. He is

now again in Federal custody pursuant to a sentence imposed by Judge Pratt this morning in connection with the Columbus Day Bombing case.

But the point is that since January of 1970 and January of 1978, in that eight-year span and of that period of time, the defendant has spent in jail twenty-six months, a little over two years. Of the remaining seventy months of that eight-year span, between January of '70 and January of '78, the defend- [25] ant has committed proven twenty-four felonies which, if averaged out, comes out to a felony about once every three months. And in support of these felonies and in support of my statement that they are proven felonies, I refer to Government's Exhibits 5 through 8 in evidence and Government's Exhibit 9, which is marked for identification and whose admission into evidence pends your decision.

This history of criminal activity and felonies one after another shows a pattern of habitual and knowing criminal conduct of the most violent and dangerous nature against the lives and property of the people of this community. It shows a complete and utter disregard on the part of Mr. DiFrancesco for the public safety. It shows that Mr. DiFrancesco is nothing less than a hardened criminal upon whom leniency is wasted, because Mr. DiFrancesco is in no way going to be rehabilitated in any way whatsoever.

I submit that this criminal history, which is based solely upon proven crimes, Your Honor, is indicative of a need to put Mr. DiFrancesco in jail for as long as is possible under the law in order to protect the public from further criminal conduct.

[26] THE COURT: In other words you are asking for the absolute maximum?

MR. BALDWIN: Yes, sir. I should say in connection with that, that the only one real consideration the Government would submit in this sentencing is that of protection of the public by keeping Mr. DiFrancesco away from the public and by keeping him incarcerated.

Now the statute, Section 3775(b), states that if it appears by a preponderance of the information submitted

to the Court, including information submitted during the trial for which the defendant is now to be sentenced, that the defendant is a special dangerous offender, he should be sentenced under the terms of Section 3575(b) of Title 18 of the United States Code which provides a maximum sentence of twenty-five years.

THE COURT: Now that is the double maximum. That is the maximum provided by the statute for the crime plus an additional five years?

MR. BALDWIN: Yes, sir. It would be a maximum of twenty-five years altogether.

THE COURT: It is a maximum plus the maximum?

[27] MR. BALDWIN: I'm not sure if I follow, Your Honor.

THE COURT: You are asking for more than the statute provides for the commission of the crimes, and you are asking an additional five years because I find him a habitual criminal?

MR. BALDWIN: Yes, Your Honor.

THE COURT: That is a maximum and maximum?

MR. BALDWIN: Yes, sir. The Government submits it has shown that Mr. DiFrancesco is a special offender and that he is a dangerous offender, and the Government also submits that, therefore, he should be sentenced to the maximum sentence which can be imposed by this Court.

MR. SHANAHAN: I assume that means that the Government has rested with that final statement.

If the Court please, so far as the factual matters that have been submitted to Your Honor, the various certified copies of Exhibits and such as that, there is no evidence that I can offer that would—

THE COURT: About the only thing that's new here this morning that I have heard here is his birth certificate.

[28] MR. SHANAHAN: I think that's right. Now I do have some quarrel with the arguments that counsel made between each Exhibit, but as far as offering any evidence to the Court, factual evidence, I can't see that there is anything that I could offer that would controvert these various public records which I assume would all be

part of your probation report, in any event. So I have no presentment that I wish to make in connection with this.

THE COURT: Very well. I will consider the matter submitted now.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CR. 76-45

UNITED STATES OF AMERICA, PLAINTIFF

—*vs*—

EUGENE DIFRANCESCO, DEFENDANT

FINDINGS OF FACT

On October 31, 1977, the defendant Eugene DiFrancesco was convicted before this Court on two counts contained in the above indictment. Count I of that indictment charged the defendant with conspiring with Vincent Rallo, Angelo Monachino, Joseph LaNovara, Vincent Massaro and others to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of Title 18, United States Code, Section 1962(d). The pattern of racketeering activity consisted of eight arsons (in violation of New York law) and eight mail frauds (in violation of federal law), all of which are described in detail in the indictment. Count II charged the defendant, Vincent Rallo, Angelo Monachino, Joseph LaNovara, Vincent Massaro and others with actually conducting the affairs of an enterprise through a pattern of racketeering activity in violation of Title 18, United States Code, Section 1962(c). The same pattern of arson and mail fraud is alleged in Count II as in Count I.

On September 12, 1977, the United States filed a Notice with the Honorable John T. Elfvin, United States District Judge, Western District of New York, setting forth the Government's belief that the defendant Eugene DiFrancesco is a dangerous special offender within the meaning of sections 3575(e)(3) and 3575(f) of Title 18 of the United States Code. The Government also made known in that Notice that, upon conviction of Mr. Di-

Francesco, it would request that he be sentenced pursuant to the provisions of section 3575(b) of Title 18 of the United States Code. This Notice was sealed by Judge Elfvin and copies were provided to the defendant's attorney, Paul Shanahan, within twenty-four hours of the filing of the Notice.

The defendant DiFrancesco was convicted on both counts of the indictment on October 31, 1977. Following his conviction the Notice was ordered unsealed by Judge Elfvin and a copy of it was presented to this Court for the first time along with the Government's motion to set a date for a hearing on the Notice. Upon receipt of that motion this Court ordered that Mr. DiFrancesco's presentence report be provided to the Government and Mr. Shanahan. The requested hearing was held on March 17, 1978. An earlier date was not available due to the fact that Mr. Shanahan was conducting the defense of a murder trial in a local court through the months of November and December 1977; Mr. DiFrancesco himself was on trial for another matter in the United States District Court, Western District of New York in Rochester during the month of January 1978 and consequently the hearing was not held in order to avoid prejudicial news reports which might have affected jurors in that case; and during February 1978 another trial was underway which was factually very closely related to the present case and in which Mr. DiFrancesco was named as a co-conspirator, and consequently the hearing was again postponed to avoid the danger of publicity prejudicial to that defendant.

On March 17, 1978, the hearing requested by the Government was held in open court and in the presence of Mr. DiFrancesco and his attorney, Paul Shanahan. The defense was notified of this date by this Court on February 27, 1978. At the hearing the Government presented no witnesses, relying instead upon the sworn testimony of the Government witnesses who appeared before this Court in the felony trial at which Mr. DiFrancesco had been convicted, and a number of certified public documents relating to Mr. DiFrancesco's past record as well as the charges in this case. The defense presented no

witnesses and raised no objection or contradiction to the accuracy of the Government's explanation of the trial testimony or to the documents used by the Government.

Section 3575(b) requires that a defendant may be found a dangerous special offender if it appears "by a preponderance of the information, including information submitted during the trial . . . and sentencing hearing" that the conditions of subsections 3575(e) and (f) are satisfied, and if the defendant was over the age of 21 years at the time of the commission of the felony for which he was convicted. It is the finding of this Court, based upon the facts as found below, that the Government has met the imposed burden and that the defendant Eugene DiFrancesco is, within the meaning of the statute, a dangerous special offender.

SECTION 3575(a)

Initially the statute requires that the defendant, to be a dangerous special offender, must have been over the age of 21 years at the time of the commission of the offense, which must itself be a felony. The crimes for which the defendant was convicted occurred between December 1, 1969, and August 31, 1973. The defendant reached the age of 21 years on June 15, 1955, and consequently he was over the age of 21 at the time of the commission of the crime. This Court relies specifically upon Government's Exhibit G4, which is a certified copy of Mr. DiFrancesco's certificate of birth admitted into evidence at the March 17th hearing without objection.

The crimes for which the defendant was convicted on October 31, 1977, are described above and are violations of Sections 1962(c) and 1962(d) of Title 18, United States Code. A certified copy of the indictment in this case was admitted into evidence without objection at the March 17th hearing as Government's Exhibit G1. Sections 1962(c) and 1962(d) are clearly felonies in that Section 1963 imposes a term of twenty years imprisonment for their violation.

SPECIAL OFFENDER

The Government has alleged in its Notice that Mr. DiFrancesco is a special offender specifically within the terms of Section 3575(e)(3). To be a special offender within that section it is necessary: first, that the felony for which the defendant was convicted was, or was committed in furtherance of, a conspiracy; second, that the conspiracy involved three or more persons in addition to the defendant; third, that the conspiracy and conduct involved engaging in a pattern of conduct criminal under the laws of any applicable jurisdiction; and fourth, that the defendant did, or agreed that he would initiate, organize, plan, finance, direct, manage or supervise all or part of the conspiracy or conduct.

1. The defendant has been convicted of two felonies: a conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity (18 U.S.C. 1962(d)) and the substantive offense of conducting the affairs of the same enterprise in the same manner (18 U.S.C. 1962(c)). The convictions are established by the certified copy of the clerk of court's minutes for October 31, 1977, relating to this case and which were admitted into evidence during the March 17th hearing without objection as Government's Exhibit G3.

The two crimes for which he was convicted are clearly set out in the indictment (G1 in evidence). The trial testimony of Angelo Monachino and Joseph LaNovara established that an enterprise or organization existed which maintained formal membership, a hierarchy of ranks, a chain of command, iniation procedures and rules and regulations. The business of this organization, or rather the goal of this conspiracy, of which Monachino and LaNovara both were members, was among other things arson and mail fraud. They also testified that other members of the organization included the defendant, Vincent Rallo and Vincent Massaro. This sworn testimony established the existence of the conspiracy described in Count I of the indictment. The membership of the defendant, Angelo Monachino, Joseph LaNovara,

Vincent Rallo and Vincent Massaro was established by the sworn trial testimony of Monachino and LaNovara as well as of Sebastian Coglitore, Anthony Giardina and Robert DelMonache concerning the individual acts of those members themselves. The testimony of these same witnesses also established that the actual conduct of the affairs of the enterprise through arsons and mail frauds was done in furtherance of the conspiracy outlined in Count I and proven at trial. Consequently this Court finds that a preponderance of the information establishes that the crimes for which the defendant stands convicted constituted a felony conspiracy (Count I, 18 U.S.C. 1962 (d)) as well as a felony committed in furtherance of that conspiracy (Count II, 18 U.S.C. 1962(c)).

2. The felony conspiracy (Count I) and the felony conduct (Count II) involved at least three persons in addition to the defendant DiFrancesco. These were Vincent Rallo who was, with the defendant here, convicted on both counts of the indictment. The Court relies upon the certified copy of the Clerk of Court's minutes (G3) which recorded Rallo's conviction, and upon the sworn trial testimony of Angelo Monachino and Robert DelMonache in support of this. In addition, Joseph LaNovara was an admitted member of the conspiracy and participant in the felony on the basis of his own sworn admission before this Court during the trial itself and on the basis of his plea of guilty to the conspiracy (Count I) entered before this Court on July 7, 1976. Further, Angelo Monachino was an admitted member of this conspiracy, as alleged in the indictment (G1) based upon his own sworn admissions before this Court during the trial and upon the sworn trial testimony of Joseph LaNovara, Sebastian Coglitore and Anthony Giardina. A fourth member of the conspiracy and participant in the felony in addition to the defendant was Vincent Massaro, as alleged in the indictment (G1) and as shown by the testimony of Angelo Monachino, and Joseph LaNovara. Mr. Massaro died in November 1973 after the conclusion of the crimes for which the defendant was convicted.

The sworn testimony taken during trial before this Court from Angelo Monachino and Joseph LaNovara, the

guilty plea of Joseph LaNovara and the conviction of Vincent Rallo together establish by a preponderance of the information that there were at least four other members of the conspiracy and participants in the substantive felony other than the defendant and that these were Vincent Rallo, Angelo Monachino, Joseph LaNovara and Vincent Massaro.

3. The conspiracy and the substantive offense for which the defendant was convicted was to engage in a pattern of conduct criminal under the applicable laws of the State of New York and the United States. Both Counts I and II of the indictment allege that the defendant and others conducted the affairs of an enterprise through a "pattern of racketeering activity," and in each case that pattern of racketeering activity involved eight arsons, in violation of Article 150 of the New York Penal Code (itself a Class C felony) and eight "mail frauds" in violation of Section 1341 of Title 18, United States Code (also a felony). This pattern of conduct was alleged in both counts of the indictment (G1) as an integral part of the conspiracy and the substantive felony. Both Angelo Monachino and Joseph LaNovara testified under oath at trial that they and the defendant and others were "members" or "associates" of the enterprise referred to in the indictment. That enterprise, as noted above, maintained formal membership, various ranks and a chain of of command, and required the formal initiation of its members. It also promulgated various rules for its membership, among which were obedience by members to those in command and silence concerning its activities. They further testified that the "business" of this enterprise was, among other things, the commission of arson in return for a percentage of the insurance proceeds collected as a result of the arson. Arson is, as this Court has judicially noticed in Government's Exhibit G2, a felony punishable by the applicable laws of New York, the State in which each of the eight named arsons were committed. Further, the use of the mails to collect insurance proceeds under such circumstances constitutes mail fraud in violation of federal law (18 U.S.C. 1341). That arsons and mail frauds were committed was estab-

lished by the trial testimony of the owners of six of the premises burned (Sebastian Coglitore, Anthony Giardina, Joseph LaNovara and Robert DelMonache) as well as by the arsonists themselves (Angelo Monachino and Joseph LaNovara). This testimony also established that the enterprise was engaged specifically in the business of arson and mail fraud over a period of over three years and that the defendant was deeply involved in each crime. This habitual conduct of a similar nature over so long a period, especially when it involves a highly organized "business" enterprise, clearly establishes a pattern of conduct on the part of the defendant, conduct which was illegal under New York law (G2) and federal law (18 U.S.C. 1341).

4. The proof at trial showed that the defendant initiated, organized, planned, directed, managed and supervised at least part of the conspiracy and the substantive crime for which he was convicted. As noted above, the sworn trial testimony of Angelo Monachino and Joseph LaNovara showed the existence of a well-organized enterprise operating an arson-for-hire business in the Rochester area. That testimony also showed that Mr. DiFrancesco held the position of "captain" at least between February 1971 when Monachino and LaNovara were initiated into the enterprise, and about July 1972. During this period six of the eight arsons took place. As a "Captain" in this enterprise, Monachino and LaNovara testified that the defendant supervised a number of men in the execution of criminal activities as ordered by the enterprise leaders. This supervision included selecting those men who would prepare a location for arson with him (on several occasions LaNovara and Monachino themselves were designated by the defendant for this job as well as actively working on the preparations himself. The trial testimony of Monachino and LaNovara also showed that the defendant arranged for the various materials used in starting the arsons, such as excelsior and light wood, and insured their delivery to the locations to be burned as well as directed others in their use.

Further, DiFrancesco actually instructed and supervised others such as Massaro and LaNovara in how to

use those materials to prepare arsons. This was testified to by Joseph LaNovara concerning the fire at 510-514 South Avenue, and by Angelo Monachino concerning the Select Tire Company fire.

The trial testimony of the owners of the buildings, and in particular the trial testimony of Sebastian Coglitore, showed that the defendant actively recruited business for the arson enterprise. Indeed, the trial testimony of Sebastian Coglitore shows that it was the defendant himself who suggested to Coglitore the burning of 510-514 South Avenue in February 1971 in return for insurance proceeds, and it was the defendant who told Coglitore the only way to secure a return of money owed by the defendant to Coglitore was to use it as a "credit" for a down payment on the burning of 504-508 South Avenue in March 1973. In other fires it was the defendant to whom other owners went when they wished to burn property. This is shown by the testimony of Anthony Giardina as it related to the fires as 660 Mount Read Boulevard and the Select Tire Company and by the testimony of Sebastian Coglitore as it related to the fire at 3253 Chili Avenue.

The trial testimony of Angelo Monachino, Joseph LaNovara, Sebastian Coglitore and Anthony Giardina show by a preponderence of information that the defendant initiated, in whole or part, at least six of the eight arsons; that he organized the preparation of those premises for arson by designating the individuals to help him in those preparations and in securing materials for the arsons; that he planned the date on which the fires would occur; and that he directed, managed and supervised members of the conspiracy such as Monachino, LaNovara and Massaro in the performance of their duties with the enterprise, at least insofar as those duties related to arson.

DANGEROUS OFFENDER

The Government has alleged in its Notice and at the March 17th hearing that, as section 3575(f) requires, the defendant is a dangerous offender because a period of confinement longer than that provided for violation of

section 1962 is required for the protection of the public from further criminal conduct by the defendant.

A review of the defendant's criminal record shows four other convictions in state and federal court for crimes committed since 1970 in the Rochester area. The same review reveals a history of virtually continuous criminal conduct over the past eight years, interrupted only by relatively brief periods of imprisonment in 1975, 1976 and 1977.

The defendant's criminal history, as proven by convictions in this and other courts, began in January 1970 with the arson at the Nickelodeon Tavern, 884 Emerson Street, Rochester, and the resultant mail fraud. This crime was one of those included in the indictment (G1) for which the defendant was convicted (G3), and which was testified to at trial by Angelo Monachino.

These two felonies were followed in the summer of 1971 by the defendant's unlawful storage of dynamite and blasting caps, a misdemeanor. The dynamite was later used by the defendant and others in October 1970 to destroy federal property in Rochester as well as other property. On January 25, 1978, he was convicted of violation of 18 U.S.C. 842(j), unlawful storage of explosives; 18 U.S.C. 1361, destruction of federal property; and 18 U.S.C. 371, conspiracy. The indictment in that case, as well as the minutes of the conviction, were admitted into evidence at the March 17th hearing without objection as Government's Exhibits G5 and G6, respectively.

These crimes were followed in February 1971 by the arson at 510-514 South Avenue, and the resultant mail fraud. This crime was also included in the indictment (G1) for which the defendant was convicted, and the defendant's role in this arson and mail fraud was testified to by Joseph LaNovara and Sebastian Coglitore.

In the months of June, July and August 1971 the defendant made an extortionate extension of credit in the amount of $1,000 and used extortionate means to collect that loan. This loansharking activity led to the defendant's conviction in March 1975 before this Court on two counts of violating 18 U.S.C. 892 (making extortionate

extensions of credit, and conspiracy) and on two counts of violating 18 U.S.C. 894 (using extortion to collect credit, and conspiracy.

In October 1971 the arson at 660 Mount Read Boulevard occurred followed by mail fraud. This crime was included in the indictment (G1) for which the defendant stands convicted, and the defendant's role in those crimes was testified to by Angelo Monachino and Anthony Giardina.

In November 1971 the arson at 3253 Chili Avenue occurred, followed by mail fraud. In December, arson and mail fraud were committed in relation to the Select Tire Company. In April 1972 arson and mail fraud were committed by him at 1344 Pinnacle Road. In May 1972 arson and mail fraud were committed by him in relation to a barn in Hamlin, New York, and in March 1973 he made the initial arrangements for arson at 504-508 South Avenue, again followed by mail fraud. Each of these crimes are included in the indictment (G1) for which the defendant stands convicted, and the trial testimony of Angelo Monachino, Joseph LaNovara, Sebastian Coglitore, Anthony Giardina and Robert DelMonache showed his deep involvement in each of those crimes.

In November 1973 the defendant conspired to murder Vincent Massaro and did murder him. In November 1976 he was convicted of this crime in the Monroe County Court, as shown by Government's Exhibit 9 admitted into evidence without objection at the March 17th hearing. This conviction was reversed in February 1978 when it was found that the necessary corroborating evidence (without which the case could not have reached the jury) was perjured. Nevertheless, the fact that the testimony of the major witnesses against him there, Angelo Monachino and Joseph LaNovara, has not been shown or even claimed to be perjurious, and the fact that the defendant was convicted shows that at least a preponderance of evidence implicated him in the crime. While this conviction is merely cumulative in relation to the defendant's criminal history and is by no means the sole point upon which this Court finds the defendant to be a dangerous offender, it is indicative of the defend-

ant's continuous criminal activity since 1970 and is validly considered by this Court in relation to the issues here under Section 3577.

This criminal history, based upon proven facts, reveals a pattern of habitual and knowing criminal conduct of the most violent and dangerous nature against the lives and property of the citizens of this community. It further shows the defendant's complete and utter disregard for the public safety. The defendant, by virtue of his own criminal record, has shown himself to be a hardened habitual criminal from whom the public must be protected for as long a period as possible. Only in that way can the public be protected from further violent and dangerous criminal conduct by the defendant, Eugene DiFrancesco.

In sum, this Court, on the basis of the facts above, finds that the defendant was over the age of 21 years when the crimes for which he stands convicted were committed; that the defendant stands convicted of two felonies; that one felony was committed in furtherance of a conspiracy (18 U.S.C. 1962(c)); that the other felony was itself a conspiracy (18 U.S.C. 1962(d)); that the conspiracy and the substantive crime involved at least four persons other than the defendant, and these were Vincent Rallo, Angelo Monachino, Joseph LaNovara and Vincent Massaro; that the conspiracy and the substantive crime was to engage in a pattern of conduct which was criminal under the laws of the State of New York (New York Penal Code, Article 150) and of the United States (18 U.S.C. 1341); that the defendant did initiate, organize, plan, direct, manage and supervise at least part of the conspiracy and the substantive criminal acts; [and that confinement of the defendant for a period longer than that provided for violation of 18 U.S.C. 1962(c) or 1962(d) is required for the protection of the public from further criminal conduct by the defendant.]*

WHEREFORE, it is the finding of this Court that the defendant Eugene DiFrancesco, having been con-

* The bracketed phrase was printed in the findings, but a line had been drawn through it by hand.

victed of two felony charges before this Court on October 31, 1977, and having been over the age of 21 years at the time of the commission of those felonies is a dangerous special offender within the meaning of sections 3575 (e)(3) and 3575(f) of Title 18 of the United States Code, and therefore subject to the sentencing provisions of section 3575(b) of Title 18 of the United States Code.

/s/ Harold P. Burke
HAROLD P. BURKE
United States District Judge

Dated at Rochester, New York,

April 21, 1978.

Entered April 21, 1978

/s/ HPB
U.S.D.J.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

CR: 76-45

UNITED STATES OF AMERICA

—*vs*—

EUGENE DIFRANCESCO, DEFENDANT

SENTENCE

Transcript of proceedings had in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, Rochester, New York, on Friday, April 28, 1978.

APPEARANCES:

RICHARD J. ARCARA, ESQ.
United States Attorney
(By Gregory Baldwin, Esq.)
Organized Crime & Racketeering Section
318 Federal Building
Rochester, New York 14614
Appearing on Behalf of the Government.

PAUL R. SHANAHAN, ESQ.
OCS Building
Syracuse, New York 13202
Appearing on behalf of the Defendant.

[2]

Rochester, New York
Friday, April 28, 1978
1:30 p.m.

MR. BALDWIN: For sentencing, Your Honor, Docket No. 76-45, United States versus Eugene DiFrancesco. Let the record reflect that the defendant, Mr. Di-

Francesco, is present in court with his attorney, Mr. Paul Shanahan.

MR. SHANAHAN: Your Honor, at this time the matter is before you for sentence. I have to say this, that I had a jury come in in Utica about one thirty this morning, and as a result I have not had too much of an opportunity to review the file. However, I would like to point out to Your Honor that this defendant now has been incarcerated for a period of three years originally on a sentence that you imposed some time ago in 1975.

On the completion of that sentence he was released on bail, and that bail was terminated as a result of some testimony by the Monroe County Sheriff's [3] Department, and he has been incarcerated ever since.

Now it has been, I think, approximately one hundred and eighty days since the conviction in this court. I'm sure as a result of previous proceedings and Your Honor's familiarity with the case, having presided over it, that there is not a great deal beyond that that I can say at this time.

I would respectfully ask that Your Honor be as lenient as you feel you can under all the circumstances.

THE COURT: I'm speaking now to the defendant himself. You have a right to make a statement before I impose sentence if you care to. You don't have to, but I have to afford you the opportunity to do so.

DEFENDANT DI FRANCESCO: No, sir.

THE COURT: On each of Counts 1 and 2, I impose a sentence of ten years, to run concurrently with each other and concurrently with three sentences imposed by Judge Pratt on March 17, 1978, in this court, so long as the defendant is held in custody on those sentences. This sentence is imposed under the sentencing provisions of Section 3575(b) of Title 18, United States Code, the statute relating to Dangerous [4] Special Offenders, having been so found by me under findings filed April 21, 1978.

That is the sentence.

* * * * *

SUPREME COURT OF THE UNITED STATES

No. 79-567

UNITED STATES, PETITIONER

v.

EUGENE DIFRANCESCO

ORDER ALLOWING CERTIORARI

Filed February 19, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 317791 281